

REMARKS

As a result of the foregoing amendment, non-elected claims 13-32 have been canceled. The cancellation of non-elected claims after a final Office Action is appropriate under 37 CFR 1.116, and entry of this amendment is respectfully requested. After entry of the amendment, claims 1-4 and 6-13 will remain pending in this application.

Applicants respectfully request reconsideration and withdrawal of the rejection of claims 1-4, 6 and 13 under 35 U.S.C. 102 (b) as being anticipated De Groot *et al.* (1977) J Neuroscience Res. 49:342-54 (hereinafter "De Groot") and claims 7-12 under 35 U.S.C. 103(a) as being unpatentable over De Groot in view of US 5,627,047 and US 5,202,120. The final Office Action maintains these rejections, reasoning that although the methods of De Groot and the combination of references require an extra preliminary step of incubating dissociated tissue cells for 2 hours to facilitate removal of macrophages, the instant claims use the transition phrase "comprising" and therefore, *per se*, the instantly claimed method encompasses the extra step of De Groot. Applicants respectfully submit that despite the use of the open transition phrase "comprising", the wording of instant claims excludes the extra step of De Groot and the combination of prior art, and therefore these rejections are improper.

Specifically, all the pending claims require the steps:

- "...a) preparing a mixture of astrocytes and microglial cells by dissociation of tissue obtained by surgical resection from a patient, and introducing *the prepared mixture of astrocytes and microglial cells* to a culture vessel, [and]
- b) incubating *the prepared mixture of astrocytes and microglial cells from step a)* under conditions enabling attachment of the astrocytes to the culture vessel ..." (claim 1, emphasis added).

Accordingly, the instant claims are quite specific in their wording that a mixture of cells is formed by dissociation of tissue and that the very same mixture is the one that is introduced to a culture vessel and incubated under conditions for attachment of astrocytes to the culture vessel. The fact that the claims use the open term "comprising" does not somehow overcome this specific requirement of the claim. Although the open term "comprising" would allow additional steps in the claimed process, it does not allow any one of the specifically claimed steps to be altered. Here, since all the instant claims are specific that the preparation of astrocytes and microglial cells formed by dissociation of tissue is the very same preparation which is introduced to a culture vessel and incubated under conditions enabling attachment of astrocytes for about 48 hours, any method which introduces and incubates a different preparation is excluded from the scope of the claims.

The methods of De Groot and the combination of references are excluded by the instant claims, because they teach incubation of a preparation of cells that has undergone a preliminary step for removing microglial cells. The teaching of De Groot is specific that the mixture of astrocytes and microglial cells prepared by dissociation of tissue undergoes a preliminary 2-hour incubation during which macrophages (a group which includes microglial cells) in the mixture adhere to the preliminary culture vessel. Only the supernatant from this preliminary incubation is then incubated for 48 hours under conditions enabling attachment of astrocytes to the culture vessel. Accordingly, this preliminary incubation required by De Groot removes microglial cells, thereby altering the cell mixture formed by dissociation of tissue before it is incubated under conditions enabling attachment of astrocytes to the culture vessel. And therefore, the method taught by De Groot fails to anticipate the instantly claimed method, which requires a mixture of astrocytes and microglial cells to be formed by dissociation of tissue and that same mixture to be incubated under conditions enabling attachment of astrocytes to the culture vessel.

Furthermore, the combination of references cited by the final Office Action fails to teach or suggest that the preliminary incubation step taught by De Groot for the removal of microglial cells should be altered or avoided. Accordingly, the combination of references fails to teach or suggest the instantly claimed method.

This application is now in condition for allowance, and prompt notice thereof is earnestly solicited.

Respectfully submitted,



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